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 9 BANK OF NEVADA

10 **UNITED STATES BANKRUPTCY COURT**

11 **DISTRICT OF NEVADA**

12 In re: ) Case No. BK-S-10-10004-BAM  
 13 GERALDINE KIRK-HUGHES, ) Chapter 11  
 14 Debtor. ) **Date:** N/A  
 ) **Time:** N/A  
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15 **LIMITED OBJECTION TO THE AMENDED DISCLOSURE STATEMENT OF DEBTOR,**  
 16 **GERALDINE KIRK-HUGHES AND AMENDED CHAPTER 11 PLAN FOR**  
**REORGANIZATION DATED NOVEMBER 15, 2010**

17 COMES NOW Interested Party, BANK OF NEVADA (the “Bank”), by and through its  
 18 attorneys, GERRARD COX & LARSEN, and files its limited objection to the Amended Chapter 11  
 19 Plan For Reorganization Dated November 15, 2010 and the Amended Disclosure Statement of the  
 20 Debtor GERALDINE KIRK-HUGHES.

21 **MEMORANDUM OF POINTS AND AUTHORITIES**

22 1. The Bank is not technically a creditor of the Debtor, but it holds the beneficial interest  
 23 in a first position deed of trust, recorded against 2551 S. Fort Apache Road, Las Vegas, NV 89102  
 24 (APN 163-07-501-013)(the “Property”). The borrower and sole obligor on the note associated with the  
 25 deed of trust at issue is Virgie Vincent (“Vincent”). However, the Debtor claims that the Property is  
 26 property of the estate, and that she is a co-owner of the Property with Vincent. Vincent apparently  
 27 conveyed a joint interest in the Property to the Debtor after the Bank made its loan to Vincent.

28 \\\

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1       2. As of March 5, 2010, the Bank was owed the principal sum of \$523,122.49, plus interest  
 2 in the amount of \$10,240.92, late charges of \$4,496.46, and other costs in the amount of \$2,787.73 from  
 3 Vincent. Pursuant to a September 21, 2009 appraisal by Lubawy & Associates, Inc., the Bank believes  
 4 that the Property is worth the sum of \$1,500,000.00. Therefore, the Bank believes that it is fully  
 5 secured by the Property.

6       3. On or about May 19, 2010, the Court entered a Stipulation and Order Regarding Relief  
 7 from the Stay, Adequate Protection and Guidelines for Future Delinquency [Doc. 56] (the “APO”).  
 8 Paragraph 10 of the APO provided as follows:

9       10. The Debtor promises to make timely adequate protection payments to the  
 10 Bank commencing on May 29, 2010 of principal and interest at a rate of Eight and  
 11 25/100 percent (8.25%) per annum, in the amount of \$5,523.39, and continuing on the  
 12 twenty-ninth (29<sup>th</sup>) day of each month thereafter during the course of the Chapter 11  
 13 Plan, **plus pay the pre-petition arrears on the Vincent Loan in the amount of**  
 14 **\$9,457.53 in monthly installments over the life of the Chapter 11 Plan, with interest**  
 15 **at 8.25% per annum.**

16 A true and correct copy of the APO is attached hereto as Exhibit “A” and incorporated by this reference  
 17 herein.

18       4. The APO ordered as follows:

19       **IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Debtor shall make**  
 20 **timely monthly payments to Bank of Nevada of principal and interest in the amount of**  
 21 **FIVE THOUSAND FIVE HUNDRED TWENTY-THREE and 39/100 Dollars**  
 22 **(\$5,523.39), commencing on May 29, 2010, and continuing on the Twenty-Ninth (29<sup>th</sup>)**  
 23 **day of each month thereafter until the Chapter 11 Plan of the Debtor is completed,**  
 24 **at which time, the balance of the Vincent Loan will be paid in full. The Debtor**  
 25 **shall also pay the pre-petition arrears on the Vincent Loan in the amount of**  
 26 **\$9,457.53 in monthly installments over the life of the Chapter 11 Plan, with interest**  
 27 **at 8.25% per annum.**

28       5. On or about November 15, 2010, the Debtor filed her Amended Chapter 11 Plan For  
 29 Reorganization, dated November 15, 2010 [Doc. 132] (the “Plan”), which provided in Paragraph 5.04,  
 30 that the “Class 6 Secured Claim” of the Bank would be paid from future income outside the plan, but  
 31 that “pre-petition arrears of approximately Ten Thousand Dollars (\$10,000.00) will be within this Plan  
 32 . . .” A true and correct copy of the Plan is attached hereto as Exhibit “B” and incorporated by this  
 33 reference herein.

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1       6. On or about November 15, 2010, the Debtor filed her Amended Disclosure Statement,  
 2 dated July 14, 2010 [Doc. 133] (the “Disclosure Statement”), which provided in Section VII “Class 6  
 3 Claim of Bank of Nevada/Sahara Mortgage, 2551 S. Ft. Property” that the Bank would be paid outside  
 4 the plan, but that “pre-petition arrears noted in the Stipulation Agreement will be made within this Plan  
 5 entered on the Docket on May 19, 2010, as Docket #56.” A true and correct copy of the Disclosure  
 6 Statement is attached hereto as Exhibit “D” and incorporated by this reference herein.

7       7. According to 11 U.S.C. § 1129, the Court shall confirm a plan only if, among other  
 8 things:

9       With respect to each impaired class of claims or interests –

10      (A) each holder of a claim or interest of such class –

11       (i) has accepted the plan; or

12       (ii) will receive or retain under the plan on account of such claim or interest  
 13 property of a value, as of the effective date of the plan, that is not less than the  
 14 amount that such holder would so receive or retain if the debtor were liquidated  
 15 under chapter 7 of this title on such date.

16      11 U.S.C. § 1129(a)(7)(A).

17       In this case, the Bank objects to the Chapter 11 Plan of the Debtor and the Disclosure Statement  
 18 to the extent that they depart from or fail to clearly set forth the agreement of the parties set forth in the  
 19 APO that the Bank be paid in full the balance of the Vincent Loan when the Plan is completed and that  
 20 the Bank be paid \$9,457.53 through the Plan at 8.25% per annum for pre-petition arrearages. The Plan  
 21 fails to outline the payment schedule for the pre-petition arrearages. The APO requires that the pre-  
 22 petition arrearages be paid in full during the course of the Plan.

23       The arrearages are properly in the amount of \$9,457.53, which includes principal, interest and  
 24 late charges owed by the borrower, Virgie Vincent, on the petition date. The Plan fails to provide a  
 25 completion date for the Plan and for the scheduled monthly payments of the pre-petition arrearages.  
 26 An interest rate of 8.25% is a realistic and fair market rate of interest for the kind of debt and property  
 27 at issue and the Bank, which is fully secured, is entitled to the present value of the arrearages if  
 28 repayment is permitted to be spread over the life of the Chapter 11 Plan. Further, the Bank expressly  
 29 agreed to the APO in reliance upon the fact that, among other things, it would be paid the present value  
 30 of its pre-petition arrearages.

1 Accordingly, the Chapter 11 Plan and the Disclosure Statement of the Debtor should not be  
 2 approved unless they are modified to provide payments to the Bank as set forth in the APO.

3 Dated this 7<sup>th</sup> day of December, 2010.

4 GERRARD COX & LARSEN

5 /s/ Aaron D. Lancaster, Esq.  
 6 Douglas D. Gerrard, Esq.  
 7 Nevada Bar No. 4613  
 8 Sheldon A. Herbert, Esq.  
 9 Nevada Bar No. 5988  
 10 Aaron D. Lancaster, Esq.  
 11 Nevada Bar No. 10115  
 12 2450 Saint Rose Parkway, Suite 200  
 13 Henderson, Nevada 89074  
 14 Attorneys for Interested Party,  
 15 BANK OF NEVADA

16 **CERTIFICATE OF SERVICE**

17 I hereby certify that I am an employee of GERRARD, COX & LARSEN, and that on the 8<sup>th</sup> day  
 18 of December, 2010, I served a copy of the **LIMITED OBJECTION TO THE AMENDED  
 19 DISCLOSURE STATEMENT OF DEBTOR, GERALDINE KIRK-HUGHES AND AMENDED  
 20 CHAPTER 11 PLAN FOR REORGANIZATION DATED NOVEMBER 15, 2010**, as follows:

21 a. Electronically Mailed By ECF System:

22 JEREMY T BERGSTROM [mbergstrom@mileslegal.com](mailto:mbergstrom@mileslegal.com)

23 GERALDINE KIRK-HUGHES [gkhughes@kirkhugheslaw.com](mailto:gkhughes@kirkhugheslaw.com); [jhbreaeklein@kirkhugheslaw.com](mailto:jhbreaeklein@kirkhugheslaw.com);  
 24 [olliek1@kirkhugheslaw.com](mailto:olliek1@kirkhugheslaw.com)

25 KATHLEEN A. LEAVITT [courtsecf3@las13.com](mailto:courtsecf3@las13.com)

26 b. Deposited in the United States Mail, at Henderson, Nevada to:

27 \*\* See Mailing Matrix \*\*

28 /s/ Dawn M. Waddoups  
 29 Dawn M. Waddoups, an employee of  
 30 GERRARD COX LARSEN